IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 828 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ROHITBHAI G RANCHHODBHAI RAMANBHAI PATEL (AMIN)

Versus

STATE OF GUJARAT

Appearance:

MRS SHILPA J UNWALLA for Petitioner

Mr K G Sheth, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 28/09/2000

ORAL JUDGEMENT

The appellants have filed this appeal against the judgment and order recorded by the learned Addl.Sessions Judge, Court no.14 on 30.6.2000 in Sessions Case

No.107/98 under which the learned Judge acquitted the first appellant of the charge levelled against him for offence punishable under section 307 and other offences under Indian Penal Code as well as under section 25(1B) of the Arms Act, 1959. However, while acquitting the first appellant of the aforesaid charges, learned Judge passed order that the muddamal gun be confiscated to the State and the remaining muddamal articles to be destroyed on expiry of appeal period, if no appeal is filed.

2. Feeling aggrieved by the aforesaid part of the judgment and order of the Addl. Sessions Judge, these appellants have preferred this appeal before this Court. The first appellant is the original accused before the court below and the second appellant is the person who claims to be the owner of the said Muddamal weapon. It has been mainly contended in this appeal that the aforesaid weapon was never used for the offence and that no offence is proved before the trial court. That therefore, the learned trial Judge should not have directed confiscation of the said gun. It is argued that the the aforesaid judgment and order with respect to the disposal of the Muddamal gun is illegal and erroneous and deserves to be set aside. The appellants, therefore, pray that the present appeal be allowed and the above order with respect to disposal of the Muddamal articles be quashed and set aside and instead, the trial court be directed to handover the Muddamal gun to the present appellant No.2.

3. The appeal was admitted and Mr K G Sheth, learned APP appears for the State. I have heard Mrs. Shilpa Unwala, learned Advocate for the appellants and the learned APP Mr K G Sheth. I have also perused the papers.

4. Learned APP has drawn the attention of this court to the observations made in paragraphs 8 and 9 of the judgment of the learned Addl. Sessions Judge which relate to the involvement of the accused and use of the Muddamal weapon in the aforesaid matter. The said two paragraphs are reproduced as under:

> "This Court will also have to consider the FSL report at this juncture. Gun is said to have been recovered on dt. 17.7.1997. It has been sent to FSL on dt. 11.08.1997. The Muddamal article no.1, the gun when examined was found that, both the barrel had been used for firing prior to the receipt of the same in the

laboratory. However, there has been no information with regard to the time of firing. Only the left barrel of this gun was found to be in working condition and therefore, in the laboratory test firing from the right barrel could not be carried out. Test fired cartridges when were compared with the empty cartridge case sent by Investigating Agency were not similar. And therefore, it was concluded that, the cartridge case sent for the examination was not fired from the left barrel of muddamal gun and since, the right barrel was not working, there was no conclusive opinion given whether the lead shot had been fired from the cartridge case of shotgun. Of course it was opined that the 10 lead shots which were recovered from the body of the injured persons and caused injury to the body of the human-being when fired from the gun and such shots are being used from the shot gun cartridges. Therefore, the FSL report also does not link conclusively the accused with the crime and that also would not help the prosecution to prove beyond reasonable doubt the involvement of the accused.

9. It is being observed at this juncture that it is a sheer responsibility on the part of DW3 who has been given the licences for the said gun to let it not be used by other persons than himself. The court strongly feels that had the injured persons not been hailing from the labour class and in its all probabilities working under the accused, the truth could have come out. However, in light of the discussion held hereinabove, it will not be possible to hold the accused guilty conclusively but, prosecution is directed to send the copy of this judgment to the Commissioner of Police so that in future there may be serious consideration to review in the decision of granting licence to DW3 and court is also of the opinion that in such circumstances, the weapon must not be handed back to the said witness. Accordingly, the following final order."

On a bare perusal of the aforesaid observations makes it clear that the learned trial Judge has held that the FSL report does not link conclusively the accused with the crime and that also would not help the prosecution to prove beyond reasonable doubt the involvement of the accused. It has been observed that one of the two

barrels was not working and so far as the second barrel is concerned, the finding is that the cartridge in question has not been fired from that barrel. So far as the non-working barrel is concerned, no opinion can naturally be given. Therefore, clear observation of the trial court is that there is no proof about involvement of the accused i.e. the first appellant and on the other hand it has not been recorded that the aforesaid gun has been used for any offence or any other act in the aforesaid case. In that view of the matter, when the Muddamal gun is not proved to have been used for commission of offence, the proper course would be to return the gun to the person concerned.

4. Learned APP has drawn the attention of the court to the discussions in paragraphs 8 and 9 of the judgment. This court is not concerned with the said observation so far as disposal of the Muddamal article is concerned. Moreover, there is no appeal with respect to the said observations made in the said two paragraphs. This court is not required to deal with the said observations because it ultimately directed the appropriate authority to take appropriate steps at appropriate level. The fact remains that the Muddamal gun is not proved to have been used for commission of offence and, therefore, the proper course would be to return it to the person who holds the licence and who is the owner thereof.

5. In the aforesaid view of the matter, this appeal is allowed. The judgment and order dated 30.6.2000 by the learned Addl. Sessions Judge in Sessions Case No. 107 of 1998 so far as they relate to disposal of Muddamal gun is concerned, the same are quashed and set aside and it is directed that instead of directing confiscation of the Muddamal gun, the same shall be returned to the present appellant no.2-Rohitbhai @ Ranchhodbhai Ramanbhai Patel (Amin). Direct service is permitted.

28.9.2000 [D P Buch, J.]
msp.